



Office of the Attorney General

State of Texas

September 2, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Dan Pleitz
Naman, Howell, Smith & Lee
P. O. Box 1470
Waco, Texas 76703-1470

OR92-524

Dear Mr. Pleitz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16464.

The City of Robinson (the "city"), which you represent, has received a request for seven categories of information, including the city's articles of incorporation, certain by-laws and *ad valorem* tax ordinances, certain correspondence, and records reflecting the city's legal expenses since January 1, 1991. You advise us that some of the requested information has been made available to the requestor. You claim, however, that billing statements from certain law firms which have represented the city are excepted from required public disclosure by the attorney-client privilege and section 3(a)(3) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation.

Open Records Decision No. 551 (1990). The governmental body exerting the 3(a)(3) exception has the burden of reasonably establishing the relatedness of the requested information to pending litigation. *Id.* at 5.

We have examined the documents submitted to us for review. You have not demonstrated and it is not clear on its face what, if any, litigation is pending. Moreover, you have not explained how the documents relate to pending litigation. We conclude therefore that you may not except the requested information from required public disclosure under section 3(a)(3) of the Open Records Act.

You also claim that the requested information is excepted from required public disclosure by the attorney-client privilege as incorporated by section 3(a)(1) into the Open Records Act. Although this office has frequently cited section 3(a)(1) to except from required public disclosure information within the attorney-client privilege, the privilege is more specifically covered under section 3(a)(7). Open Records Decision No. 574 (1990) (copy enclosed). Section 3(a)(7) protects

 matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure. (Footnote omitted.)

Attorney-client communications, however, may be withheld only to the extent that such communications document confidences of governmental representatives or reveal the attorney's legal opinion and advice. Open Records Decision No. 589 (1991). Open Records Decision No. 589 addresses attorney fee bills. Open Records Decision No. 574 at 3. Records of calls made, meetings attended, or memos sent, so long as no legal advice or client confidences are revealed, may not be excepted under section 3(a)(7). *Id.*

You have submitted to us for review several invoices which you advise are responsive to the request for information. We have examined the invoices and agree that some of the information detailing daily activities undertaken by lawyers on behalf of clients may constitute legal opinion and advice or client confidences. Accordingly, this information may be withheld from required public disclosure under section 3(a)(7) of the Open Records Act. However, information contained in the invoices which summarize total attorneys' fees and expenses owed does not constitute legal opinion and advice or client confidences and may not be withheld

under section 3(a)(7). For your convenience, we have marked the information which may be withheld from required public disclosure under section 3(a)(7) of the Open Records Act. The remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-524.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GCK/lmm

Enclosures: Marked Documents
Open Records Decision No. 574

Ref.: ID# 16464

cc: Mr. Penn J. Wheelis
513 North Robinson Drive
Waco, Texas 76706